

# **Exhibit A**

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October 1, 2020

**BY EMAIL**

Andrea M. Griswold  
 Joshua A. Naftalis  
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 Assistant United States Attorneys  
 United States Attorney's Office  
 for the Southern District of New York  
 One St. Andrew's Plaza  
 New York, NY 10007

Re: *United States v. Anilesh Ahuja, et al.*, 18 Cr. 328 (KPF)

Dear Andrea, Josh and Max:

We write to ask that the government provide certain information, described more fully below, to assist us in reviewing the production we received last week.

1. It appears that at least some of the time stamps on the emails do not reflect ET times, and we are not able to discern the time zones from the face of the emails. For example, SDNY\_PPI\_00004 has a time stamp of 12:32:25 p.m., but refers to "going to court at 8:45"—suggesting that the email was sent before 8:45 a.m. ET. Please let us know if you are able to identify the time zones reflected in the time stamps in the email headers.
2. Certain emails produced by the government refer to specific voicemails received (but apparently not produced) by the government. Please let us know whether those voicemails exist. In particular, we note that:

MATTHEW W. ABBOTT  
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 ALLAN J. ARFA  
 JONATHAN H. ASHTOR  
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 ARIEL J. DECKELBAUM  
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 HARRIS B. FREIDUS  
 CHRISTOPHER D. FREY  
 MANUEL S. FREY  
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 ADAM M. GIVERTZ  
 SALVATORE GOSLIORMELLA  
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 ROBERTO J. GONZALEZ\*  
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 ERIC GOODISON  
 CHARLES H. GOOGE, JR.  
 ANDREW G. GORDON  
 BRIAN S. GRIEVE  
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 ALAN S. HALPERIN  
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 BRIAN S. HERMANN  
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 ROBERT E. HOLO  
 DAVID S. HUNTINGTON  
 AMRAN HUSSEIN  
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 JAREN JANGHORANI  
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 JEH C. JOHNSON  
 MEREDITH J. KANE  
 JONATHAN S. KANTER  
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 PATRICK N. KARSNITZ  
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BRIAN KIM  
 KYLE J. KIMPLER  
 ALEXIA D. KORBERG  
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- a. Dinucci's attorney sent an email to Andrea on April 4, 2017, at 8:27 p.m., "Andrea – just left you a voice message," to which Andrea responded, "Thanks, got your message." That voicemail message (which, based on subsequent communications, appears to relate to Dinucci's allocution) was not included in the government's production. We also note that the call log does not appear to include an entry for that call from Dinucci's lawyer.
  - b. SDNY\_PPI\_00122 refers to a voicemail left for Andrea by counsel for Dinucci (presumably on June 10, 2019), which Andrea forwarded to Max. Neither the referenced voicemail, nor Andrea's communication forwarding it to Max (if any), was included in the production.
3. The May 2020 response to our FOIA request was produced by EOUSA. Last week's production, however, does not appear to include any communication evidencing the transmittal of documents from the U.S. Attorney's Office to EOUSA. Please let us know how the materials responsive to the FOIA request were transmitted to EOUSA and provide the cover letter (or email) under which they were transmitted.
4. The government's June 19, 2020 letter to the Court explained that Josh provided material responsive to our FOIA request to Associate U.S. Attorney McEnany on March 9, 2020, and that Mr. McEnany "requested the Office's FOIA Specialist to reformat and chronologically order the material to facilitate review for exemptions." Dkt. No. 368 at 3. SDNY\_PPI\_00181 appears to be the March 9, 2020 email from Josh to Mr. McEnany attaching responsive material. The government's production, however, does not include any communications between Mr. McEnany and the Office's FOIA Specialist.

In addition, there are differences between the versions of certain documents attached to Josh's March 9, 2020 email to Mr. McEnany and the versions of those documents that were ultimately produced by EOUSA. For example, SDNY\_PPI\_00187 is an October 30, 2018 cover email from Josh to Andrea and Max enclosing the government's redline of the proposed Majidi allocution, but that is not the same version of this email that we received in the FOIA production. The version included in the FOIA production on May 27, 2020 included "Hodge, Darian (USANYs)" in the header, and contained no attachment enclosing the redlined allocution. The government's production does not indicate how the produced version came into the possession of EOUSA, why this header was in the version produced as part of the FOIA production but not in the version contained at SDNY\_PPI\_00187, or why the attachment was not included.

Certain of the attachments to the March 9, 2020 email from Josh to Mr. McEnany (at pages SDNY\_PPI\_00193, 00198 and 00203) state "Image for this document EOUSA00114049 2 [or 52 2 or 55 2] is not exported." Please let us know the meaning of that language, and whether it reflects the original content of these pages when emailed on March 9, 2020 or an issue with the government's September 24, 2020 production. Finally, in light of the issues noted above, and to facilitate our

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review of these documents against the documents produced by EOUSA, please provide a native version of the March 9, 2020 email.

5. There are several unexplained redactions in the text messages between Josh and Andrea on June 11–12, 2020. Please provide the redacted text or, at minimum, an explanation for the redactions.
6. There seem to be inconsistencies between the searches that were agreed to and the searches actually conducted. In particular:
  - a. In our August 3, 2020 email exchange, the parties agreed to use the terms “Tarlowe,” “Ahuja,” “PPI,” “Majidi,” “Rosenberg,” “Naftalis,” “Redline,” and the FOIA file number to search and collect the emails of Mr. McEnany and the Information Management Specialist. But your September 24 letter suggests that those individuals used significantly more limited terms, and that each custodian applied different terms than the other. According to your letter, Mr. McEnany used the search terms “000663 or (‘Released Records’) /5/ TARLOW” (with the spelling later corrected to “TARLOWE”), and the Information Management Specialist used a different set of terms: “plea allocution,” “October 29, 2018,” “October 30, 2018,” “October 31, 2018,” “Anilesh Ahuja,” “Amin Majidi,” “Jeremy Shor,” “Premium Point Investments,” and “PPI.” Please perform the agreed-upon searches or explain why these changes were made.
  - b. Your September 24 letter also states that Mr. McEnany searched his “retained” emails using the terms “Naftalis,” “PPI,” “Tarlowe,” “FOIA,” and “Ahuja,” as a “check” on his search terms. To the extent that search was limited to “retained” emails rather than all emails captured by the backup system, please explain why it was limited in that way. Please also let us know whether the Information Management Specialist performed a similar “check” of his emails, and if so, what parameters he used.
  - c. In your July 31, 2020 letter to the Court, you committed to reviewing all internal instant message chats on the USAO’s instant messaging system between and among the trial team for the week preceding and the week following the guilty plea hearings for Dole, Majidi, and Dinucci, and to use search terms for certain other periods. Dkt. 393 at 2. Please confirm that AUSA Metzner’s review included all instant messages, not limited by search terms, between and/or among the trial team and the supervisors, for the week preceding and the week following the guilty plea hearings for Dole, Majidi, and Dinucci. Similarly, please confirm that AUSA Metzner reviewed all instant messages—not limited by keyword search terms—between and among the trial team for the period June 3–June 11, 2019.
7. Your September 24 letter states that you did not identify any additional materials for production on the government’s internal instant messaging system. However, it is not clear to us what universe of instant messages was available for review. At the July 24, 2020 conference, Andrea stated that “at least one member of the trial

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team's chats are completely backed up." July 24, 2020 Tr. 26:13-14. And in your July 31, 2020 letter to the Court, you stated that if you learned in the course of conducting your searches that any materials were not preserved, you would notify the Court and the parties of that fact at the time of production. Please confirm that all instant messages were in fact preserved for the relevant time periods for each of the three trial team members and the two supervisors.

8. Your September 24 letter states that the trial team reviewed their own call detail records for the date ranges surrounding the guilty pleas of the cooperators and identified calls with counsel for the cooperators.
  - a. Our understanding, as reflected in our July 28, 2020 and August 5, 2020 emails to you, was that you would be reviewing call detail records in connection with the search of June 3 to June 11, 2019 communications ordered by the Court on August 5, 2020. The emails you have produced from this period, as well as 3500 material prepared on June 7 and 8, 2019, reflect that there were calls with counsel for each of Majidi, Dole, and Dinucci, during this period. Please confirm that you will review the call detail records for this period as part of your search.
  - b. Please confirm which phone numbers were used in identifying communications with counsel for cooperators. Specifically, please confirm that the search would capture calls involving any of the following: (i) office and cell phone numbers for cooperators' counsel; and (ii) office (including any trial room line) numbers, and work and personal cell phone numbers for the AUSAs.
9. SDNY\_PPI\_00079 and SDNY\_PPI\_00094 are June 8, 2019 and June 10, 2019 emails, respectively, that each enclose prior emails that were "Retrieved From Archive." Our understanding is that this language reflects that those emails had at some point been deleted by the user. Please let us know if our understanding is not accurate, and if those emails were at any point deleted, please identify when they were deleted and by whom.
10. Your September 24 letter states that text messages provided to AUSA Metzner that had been identified on a personal cell phone of a trial team AUSA were collected by a paralegal. According to the letter, the paralegal, with the trial AUSA's assistance, conducted the agreed-upon word searches on text messages during relevant periods.
  - a. Please confirm that the time periods searched included August 31, 2018 to December 31, 2018 (the four months surrounding Majidi's guilty plea), and June 3, 2019 to June 11, 2019.
  - b. Please confirm that for the time periods of October 24, 2018 to November 6, 2018 (the two weeks surrounding Majidi's guilty plea) and June 3, 2019 to June 11, 2019, AUSA Metzner was provided with and reviewed all text messages from the trial AUSA's personal phone. (Our understanding of the



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government's July 31, 2020 letter, as endorsed by the Court on August 5, is that all text messages of the three trial AUSAs for the week preceding and the week following the three guilty pleas and for the June 3, 2019 to June 11, 2019 period would be reviewed. Please confirm that to the extent that the trial team used personal cell phones for work purposes, all text messages from those devices for the relevant periods were included in the review.)

- c. Please clarify which text messages in the production were produced from work cell phones and which were produced from the personal cell phone.
11. The September 24 letter states that text messages were "extracted" from the trial team's cell phones, but that the Investigative Analysis professional was not able to "recover" text messages from those phones for 2017 or 2018. It further states that text messages were reviewed from the trial team member's personal cell phone, but the Investigative Analysis professional was not able to "extract" the text messages from the personal cell phone. Please explain why these sets of text messages were not able to be "recovered" and "extracted," respectively, and whether any text messages falling within the review periods had been deleted.
12. SDNY\_PPI\_00054 reflects a draft circulated by Max on June 7, 2019, of a letter that was ultimately sent to the Court and the defense on June 8, 2019. Although we do not see any additional versions of the letter in the production, the draft circulated on June 7 and the letter ultimately submitted on June 8 appear to differ. Please confirm whether any other versions of the letter were identified during AUSA Metzner's review, and if so, the bases for determining it was not appropriate to produce those versions.
13. Finally, could you please explain the criteria used to determine whether a particular document should be produced.
  - a. Your September 24 letter states that the decision to produce any given document does not reflect a determination that the document constitutes *Brady*, *Giglio*, or *Triumph Capital* material, but rather that production of the specific document in the circumstances of this case and to aid the court's fact-finding inquiry is "appropriate." Your letter does not explain what criteria were used to make that determination.
  - b. The September 24 letter also does not indicate whether any potentially relevant documents were withheld based on a claim of work product or other privilege. To the extent they were, please provide a log identifying the basis for withholding such documents.

Very truly yours,



Richard C. Tarlowe  
Roberto Finzi

cc: Counsel of Record